UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,404	11/12/2003	Roger Standridge	I004-P03188US	6880

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EXAMINER
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ART UNIT	PAPER NUMBER
2616	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/706,404	STANDRIDGE, ROGER
	Examiner	Art Unit	
	Dmitry Levitan	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _12 November 2003_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-40_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) _1-4, 11-14, 21-24 and 31-34_ is/are allowed.

6) ☒ Claim(s) _5-10, 15-20, 25-30 and 35-40_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _12 November 2003_ is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

    1. ☐ Certified copies of the priority documents have been received.

    2. ☐ Certified copies of the priority documents have been received in Application No. _____.

    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

Specification

1.   The disclosure is objected to, because abbreviations or acronyms DMA and DUT are

cited throughout the specification without explanation. Applicant should provide a full

explanation for the acronyms at least at their first occurrence in the specification.

2.   The disclosure is objected to because of the following informalities: device 160 is

disclosed on pages 19 and 20 as a real gateway, contradicting Fig. 1, 2 and 5 and disclosure on

page 7, wherein the device 160 is shown and described as a console.

        Appropriate correction is required.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4.   Claims 5-9, 15-19, 25-29 and 35-39 are rejected under 35 U.S.C. 112, second paragraph,

as being indefinite for failing to particularly point out and distinctly claim the subject matter

which applicant regards as the invention.

        Claims 5, 15, 25 and 35 limitations directed to providing traffic to first endpoint,

processing the provided traffic and releasing traffic to the first endpoint are unclear, because the

limitations are contradictory. It is not understood, how the traffic can be provided and processed

at the endpoint without being released to the first endpoint.

        Claim 7, 17, 27 and 37 limitations directed to the transmission rate are unclear, because it

is not understood what transmission step of the parent claim is referred to: providing traffic for

transmission or releasing traffic for transmission.

Claims 6, 8, 9, 16, 18, 19, 26, 28, 29, 36, 38 and 39 are rejected as the claims depending

on the claims rejected above.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 5, 6, 8-10, 15, 16, 18-20, 25, 26, 28-30, 35, 36 and 38-40 are rejected (as best

understood) under 35 U.S.C. 103(a) as being unpatentable over Schwaller (US 5,838,919).

7.   Regarding claims 5, 15, 25 and 35, Schwaller substantially teaches the limitations of the

claims:

A method, apparatus, storage medium and computer device of generating processed

traffic (Console 20, shown on Fig. 2-4 and 3:56-6:12, as an active device to generate test scripts

for testing networks under actual operating condition/traffic 8:9-12), the method comprising

providing traffic for transmission to a first endpoint, the traffic comprising plural data

units processing the provided traffic (providing test scripts for test scenario 7:63-8:56, including

identification of first endpoint 8:25-41, wherein the test scenario is adapted to the protocol,

TCP/IP, 10:64-65, used on the network under test, inherently comprising packets, because the

packets are essential for creating the test scenario adaptation compatible with the network),

holding the processed traffic (holding/storing the files with scripts at console node 20, as

disclosed 8:60-67),

releasing the held traffic for transmission to the first endpoint (releasing the test

scenario/traffic to the first endpoint 10:29-32).

In addition, Schwaller teaches generating test scenarios comprising files with

predetermined size to simulate short and long conversations, as disclosed on 10:50-11:6 and

tables on 9:1-10:25.

Schwaller does not teach holding the processed traffic until a predefined amount of

processed traffic has accumulated.

Official notice is taken that holding the processed traffic until a predefined amount of

processed traffic has accumulated to ensure that the test scenario comprising multiple scripts has

been compiled to create a long conversation scenario is well known and expected in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention

was made to add holding the processed traffic until a predefined amount of processed traffic has

accumulated to the system of Schwaller to improve the system operation by completing and

verifying the test scenario before the start of the test to avoid testing with improperly compiled

test scenario.

In addition, regarding claims 15 and 25, Schwaller teaches console node 20 implemented

in software and hardware 27:1-29:32, inherently comprising a processor and a memory, because

they are essential to perform functions of the console, as described above.

8.   Regarding claims 10, 20, 30 and 40, Schwaller substantially teaches the limitations of the

claims:

A method of generating processed traffic (Console 20, shown on Fig. 2-4 and 3:56-6:12, as an active device to generate test scripts for testing networks under actual operating condition/traffic 8:9-12), the method comprising

receiving traffic at a first rate, the traffic comprising plural data units, the data units including an address and a payload (console 20 receiving test results, as shown step 142 on Fig. 10 and 38:13-58, wherein the result inherently comprised an address and payload, because addresses and payload are essential to deliver any data across TCP/IP network under test. The console 20 inherently receives data at a rate, because any network communication has a rate),

holding the received traffic and decrypting the held traffic (the test results are accumulated , as shown in Raw Data Table 5 on 38:43-60 and are analyzed to calculate the network performance results.from thee raw data, as shown on Table 6 and 39:16-67)

analyzing the decrypted traffic wherein the decrypting and analyzing is performed at a second rate (analyzing the data to produce the network test results, Table 6 and display the results using GUI 28, 27-63-28:22 inherently at a second rate, as an analysis process has a rate).

Schwaller does not teach second rate less than a first rate.

Official notice is taken that analyzing data can be performed at lower rate in comparison with the rate of the data for analysis is received is well known and expected in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add analyzing data can be performed at lower rate in comparison with the rate of the data for analysis is received to the system of Schwaller to improve the system cost by utilizing a lower speed processor for the data analysis.

In addition, regarding claims 20 and 40, Schwaller teaches console node 20 implemented in software and hardware 27:1-29:32, inherently comprising a processor and a memory, because they are essential to perform functions of the console, as described above.

9.   Regarding claims 9, 19, 29 and 39, Schwaller teaches the processing comprising application-layer processing 8:9-12.

10.   Regarding claims 6, 16, 26 and 36, Schwaller substantially teaches the limitations of the claims (see corresponding parent claims rejection above):

Schwaller does not teach using encrypting data in the system.

Official notice is taken that encrypting data in networks is well known and expected in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use encrypting data in the system of Schwaller to improve the system security to maintain privacy for the system users.

11.   Regarding claims 8, 18, 28 and 38, Schwaller substantially teaches the limitations of the claims (see corresponding parent claims rejection above):

Schwaller does not teach using higher rate for transmitting traffic in comparison with the rate for the traffic providing and processing.

Official notice is taken that manipulating data can be performed at lower rate in comparison with the transmission rate of the data in the network is well known and expected in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add manipulating data performed at lower rate in comparison with the transmission

rate of the data in the network to the system of Schwaller to improve the system cost by utilizing

a lower speed processor for the data manipulation.

Allowable Subject Matter

12.   Claims 1-4, 11-14, 21-24 and 31-34 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Dmitry Levitan whose telephone number is (571) 272-3093. The

examiner can normally be reached on 8:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Lynn Feild can be reached on (571) 272-2092. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Dmitry Levitan
Primary Examiner
Art Unit 2616